



Making San Francisco Bay Better

July 18, 2013

John Briscoe
Briscoe Ivester & Bazel LLP
155 Sansome Street, Seventh Floor
San Francisco, California 94104

SUBJECT: Violations at Scott's Jack London Seafood Restaurant
[BCDC Permit Nos. 1985.019A (the Port of Oakland's permit),
1985.019B (the Scott's permit) and Enforcement File No. ER2013.008]

Dear Mr. Briscoe:

By letter dated June 21, 2013, your colleague Peter S. Prows informed me that Scott's has appointed you as counsel. As such, we are addressing this letter to you.

As you are aware, on May 16, 2013, we sent Scott's and the Port of Oakland a 35-day enforcement letter that outlines a number of violations of the two above-referenced permits and of the McAteer-Petris Act, the manner in which Scott's and the Port of Oakland can resolve the violations, and the enforcement options that BCDC can use to resolve the violations. Please refer to that letter, in addition to this letter, for direction on how to proceed with resolution of each of the violations cited therein.

Reports. By letter dated June 20, 2013, Scott's submitted five and a half years of reporting in response to Section C-3 of my letter dated May 16, 2013, and as required by Special Condition II-B-2-c including Exhibit A of the Scott's permit. Thank you very much for this submittal. There are a number of events that lack a date and should be revised to include one. The 2013 report indicates that there will be eight Eat Real events. Please clarify whether these are Scott's or Port of Oakland events by July 31, 2013. Please also inform us of the name and title of the person who prepared each report, the source of data used to prepare each report, and the date each report was prepared.

Administrative Civil Penalties. By submitting five annual summaries and 22 quarterly reports, Scott's has resolved the reporting violations within 35 days from May 16th and, therefore, has not accrued fines for these specific violations (Our letter dated May 16th was in error in stating that 30 quarterly reports and six annual summaries were required). However, as described in the reports and discussed below, Scott's occupied the public pavilion more than 73 times each year (among other violations such as excess weekend events per month, excess consecutive events, the failure to keep the pavilion open until one hour prior to an event and to retract the pavilion enclosure one hour after an event and multiple installations of an additional tent of variable sizes in the Port's public access area, to be addressed separately). As noted in the 35-day enforcement letter, staff may commence a formal enforcement proceeding resulting in a civil penalty order to resolve the penalty portion of these violations.

Timely Future Submittal of Quarterly Reports. In the future, Scott's will not be able to retroactively resolve the requirement to submit quarterly reports as they are intended to forecast the future and cannot do so unless submitted in advance of the period they portray.

Future Required Report Content and Format. Scott's future reports prepared for and submitted to the Port of Oakland and BCDC must contain the following information to be found consistent with the permit's requirements. Each report, whether quarterly or annual, is required to provide:

1. The day of the week each event will occur or occurred; the expected and actual duration of each event; the total number of hours the pavilion will be and actually was privately occupied to prepare for, use for, and to clean up after the event; the number of consecutive events planned and held; the number of weekend days/nights the pavilion is scheduled to be and was actually used (the allowable limit changes depending on the season); the total number of events scheduled and held per quarter or year (closure of the pavilion for any reason counts as an event); and a comparison of how the use per quarter and year met or exceeded each of the use limitations of the permit;
2. The name and title of the person who prepared each report, the source/s of data used to prepare each report, and the date each report was prepared; and
3. We recommend that you prepare the necessary reporting template/s that include/s all of this information for our review and approval to assure that future submittals contain all of the required information and can be easily reviewed and approved by the Port and BCDC. We look forward to assisting you in developing an easy to use format.

Consistent Overuse of the Pavilion and Supplemental Data Requested. The reports we have received show that Scott's has held more events each year than the Scott's permit allows. Below is a table summarizing the number of events that were held based on these reports.

In 2013, Scott's reports that it will hold a total of 98 events, excluding the eight Eat Real events, which is 25 more than allowed. However, Scott's does not report that the pavilion was closed for construction for 61 days from January 1st through March 2nd. Scott's 2013 report indicates that 40 events were held between March 3rd and June 30th. Therefore, the pavilion has been privatized for 101 days, or 28 more times than allowed annually in the first six months of the year.

Year	Number of Events (73 allowed)	Excess Number of Events	Public Access Available (80% is required)
2008 (Scott's data)	108	35	70%
2009 (Scott's data)	78	5	79%
2010 (Scott's data)	112	39	69%
2011 (Scott's data)	104	31	71%
2012 (Scott's data)	101	28	72%
2012 (Port's data)	182	109	50%
2013 (Combined Data) (Jan 1 - June 30)	101	28	55%
2013 (Scott's Data) (July 1 - Dec 31)	48 scheduled	TBD	TBD

Due to Scott's past and consistent failure to provide the Port with the required quarterly reports and an annual summary each year, in 2012, the Port tracked Scott's use of the pavilion and in doing so obtained its own record, which was recently submitted to BCDC (attached, letter without report from Michael D. Meyer, Director, Northern California Corporate Occupier & Investor Services, Cushman and Wakefield, dated April 18, 2013, received by BCDC on April 22, 2012). As noted in the table above, the Port's records indicate the pavilion was closed for 182 days in 2012, which results in private use of the pavilion for 50% of the year, a full 30% more private use than allowed; the Port's staff observed 78 events, 49 of which were named and 29 of which it was unable to identify. As well, the Port's staff observed 104 additional days when the pavilion was closed and it was unclear whether there was an activity inside. The Port's staff concludes that Scott's 2012 use of the pavilion violates all use provisions of the pavilion outlined in the permit by exceeding the number of private events, exceeding the number of consecutive days that the pavilion is allowed to be used, exceeding the number of hours before and after events that the tent/retractable wall panels can be in place, and failing to provide the quarterly schedule of events and the annual report of events held.

The discrepancy between the Port's data and Scott's data necessitates that by July 31, 2013, you submit data about additional dates when the pavilion was closed between 2008 and 2012, whether or not there was an event. Further, we wish to know at which events Scott's erected a second tent in the Port's public access area.

Other Violations and Disposition of Standardized Fines. The following is a summary of the outstanding violations cited in the 35-day enforcement letter and the standardized fines that have accrued to date.

As of the date of this letter, Scott's and the Port have not removed the four unauthorized structures cited on page 5 of the May 16th enforcement letter nor obtained amendments to the Scott's and Port's permits to retroactively authorize them. Nor have Scott's and the Port of Oakland responded to the application-filing letter, also dated May 16, 2013. The standardized fines for these four violations have accrued to \$2,000/each for a total of \$8,000. The fine amount will increase to \$5,000/each from July 21st through August 19th and then accrue at a rate of an additional \$100/day each thereafter until the four unauthorized structures have either been removed or retroactively authorized.

We have not received revised plans for the retractable wall panel cited on page 5 of the May 16th enforcement letter, which respond to Ellen Miramontes' last letter to Steve Hanson, dated May 30, 2013. The standardized fines for this violation have accrued to \$1,000 and will increase to \$3,000 from July 21st through August 19th and then accrue at a rate of an additional \$100/day thereafter until we have approved the plans for the retractable wall panel system.

We have not received a revised legal instrument to dedicate the required public access area cited on page 6 of the May 16th enforcement letter, which respond to Brian Flynn's letter to Mr. Hanson, dated June 10, 2013. The standardized fines for this violation have accrued to \$1,000 and will increase to \$3,000 from July 21st through August 19th and then accrue at a rate of an additional \$100/day thereafter until we have approved the legal instrument.

Scott's has not installed nor maintained the required public access improvements within the public access area pursuant to staff approved plans, as cited on page 6 of the May 16th letter, nor submitted plans for the required public furniture and signage. The standardized fines for this violation have accrued to \$1,000 and will increase to \$3,000 from July 21st through August 19th and then accrue at a rate of an additional \$100/day thereafter until the required public access improvements have been installed and maintained pursuant to staff approved plans.

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Car Placed in the Broadway Street Plaza. We learned from the Port of Oakland the Scott's placed a car in the Broadway Street Plaza at least since June 12, 2013, which remains in place. This is an annual activity and prohibited by the Vehicle Access Plan. We request that Scott's ceases placing non authorized structures in the public access areas. Future such violations will be considered for administrative civil penalties.

Conclusion. We are concerned by the lack of progress to date and, as stated in the enforcement letter, dated May 16th, may commence a formal enforcement proceeding to achieve timely compliance. Please respond by July 31, 2013, to let us know how and when you or your client plans to address these remaining violations. I will be on vacation from July 26 through August 12, 2013. In my absence, please correspond with John Bowers, Staff Counsel, and Mike Sevik, Legal Secretary.

Sincerely,



ADRIENNE KLEIN
Chief of Enforcement

AK/ms

cc: Steve Fagalde, President, Scott's Jack London Seafood Inc.
Steve Hanson, Consultant to Scott's Jack London Seafood Inc.
Julie Braun, Commercial Representative V, Port of Oakland
Dorin Tiutin, Commercial Real Estate Manager, Port of Oakland
Jennifer Koidal, General Manager, Cushman and Wakefield
Caroline Morris, Senior Vice President, Ellis Partners LLC
John Bowers, Staff Counsel, BCDC
Mike Sevik, Legal Secretary, BCDC